

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 47-110(p)(1)

Specific Purpose:

This section is adopted to include a new definition of “Probation” to mean the period of time that a licensed child care provider is required to comply with specific terms and conditions set forth by the California Department of Social Services (CDSS) in order to stay or postpone the revocation of the provider’s license.

Factual Basis:

Education Code Section 8212(e), as amended by Assembly Bill (AB) 72 (Statutes of 2004, Chapter 358), provides direction to county welfare departments (CWDs) that upon being notified that a licensed child care provider has been placed on probation, the CWD is required to take certain actions. Health and Safety Code Section 1596.773 defines probation as the period of time that a licensed child care provider is required to comply with specific terms and conditions set forth by the department in order to stay or postpone the revocation of the provider’s license.

Section 47-110(r)(3)

Specific Purpose:

This section is adopted to include a new definition of “Revocation” to mean an administrative action taken by the CDSS to void or rescind the license of a child care provider due to serious or chronic violations by the provider.

Factual Basis:

Education Code Section 8212(e), as amended by AB 72 (Statutes of 2004, Chapter 358), provides direction to CWDs that upon being notified that a child care provider’s license has been revoked, the CWD is required to take certain actions. Health and Safety Code Section 1596.773 defines revocation as an administrative action taken by the department to void or rescind the license of a child care provider because of serious or chronic violations of licensing laws or regulations by the provider.

Section 47-110(t)(1)

Specific Purpose:

This section is adopted to include a new definition of “Temporary Suspension Order” (TSO) to mean an administrative action taken by CDSS that immediately suspends a child care provider’s license.

Factual Basis:

Education Code Section 8212(e), as amended by AB 72 (Statutes of 2004, Chapter 358), provides direction to CWDs that upon being notified of a temporary suspension order for a licensed child care provider, the CWD is to take certain actions. Health and Safety Code Section 1596.886 states that the temporary suspension of any license is the action necessary to protect any child of a child care facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety.

Section 47-301.9

Specific Purpose:

This section title is adopted to provide a location for the procedural instructions to CWDs when the CWD has been notified that an action has been taken against a child care provider. This includes circumstances when the provider’s license has been revoked, temporarily suspended, or placed on probation.

Factual Basis:

This section is necessary to implement Section 8212(e) of the Education Code, which was amended by AB 72 (Statutes of 2004, Chapter 358) and became effective on January 1, 2005.

Section 47-301.91 et seq.

Specific Purpose:

These sections are added to direct CWDs to terminate payments to the child care provider and to notify parents and the child care provider of the termination within two business days of being informed that the child care provider’s license has been revoked or temporarily suspended. Although payment to the provider is terminated, the family remains eligible for child care services.

Factual Basis:

These sections are necessary to implement Section 8212(e) of the Education Code, which was amended by AB 72 (Statutes of 2004, Chapter 358) and became effective on January 1, 2005. Education Code Section 8212(e) states that within two days of being notified of a revocation or a TSO for a licensed child care provider, the child care program must terminate payments to the provider and notify each parent and the provider in writing that payments have been terminated and the reason for the termination.

Section 47-301.92

Specific Purpose:

This section is added to direct CWDs to notify parents in writing when their child care provider's license has been placed on probation. The CWD must provide this notice within two days of being informed of the probationary status. The CWD must also inform parents in writing that they have the option of locating alternate child care or remaining with the same provider without interruption of payments.

Factual Basis:

This section is necessary to implement Section 8212(e) of the Education Code which was amended by AB 72 (Statutes of 2004, Chapter 358) and became effective on January 1, 2005. Education Code Section 8212(e) states that upon being notified that a licensed child care provider has been placed on probation, the CWD must notify each parent in writing that the provider has been placed on probation and that the parent has the option of selecting a different provider or remaining with the same provider without risk of termination of payment.

b) Identification of Documents Upon Which Department Is Relying

AB 72, Chapter 358, Stats of 2004

Health and Safety Code Sections 1596.773 and 1596.886

Education Code Section 8212

c) Local Mandate Statement

These regulations do impose a mandate upon local agencies but not upon school districts. The mandate is not required to be reimbursed pursuant to Section 17500, et seq. of the Government Code because implementation of the regulations will, if anything, result in no costs.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #2 at the public hearing held on August 16, 2006 in Sacramento, California. No oral testimony was received. Written testimony was received from:

The Children's Advocacy Institute (CAI)
The Los Angeles County Department of Public Social Services (LACDPSS).

Section 47-110(p)(1)

1. Comment:

~~"Reserved~~ Probation

"We recommend that the proposed language be revised to read as follows:

"Probation "Probation" means the *prescribed* period of time ~~that~~ *within which* a licensed child care provider is required to comply with specific terms and conditions set forth by the California Department of Social Services (CDSS) in order to stay or postpone the revocation of the provider's license." (LADPSS)

Response:

The Department appreciates this comment but is not amending the regulations. The definition for "probation" as stated in the proposed regulations is provided by Health and Safety Code Section 1596.773(a).

Section 47-301.91

2. Comment:

“Proposed section 47-301.91 identifies the two actions that a county must take within two business days of being notified by the Resource and Referral program that a licensed child care provider’s license has been temporarily suspended or revoked. This provision implements Education Code §8212(e)(3). However, section 8212(e)(3) requires that these two actions be taken “concurrently,” and that term is missing from the regulatory language. This might appear to be a minor point, since both actions must be performed within two business days. However, the Legislature saw fit to include this term as part of the statutory mandate, perhaps to ensure that both actions receive equal priority. As such, we think it would be appropriate to include this term in the regulatory language.” (CAI)

Response:

The Department appreciates this comment but is not amending the regulations. CAI’s suggestion was taken into consideration; however, adding the word “concurrently” would be superfluous, as the regulations clearly state that the two actions must be performed within two business days. Therefore, the proposed regulations were not revised.

Section 47-301.92

3. Comment:

“Education Code §8212(e)(4) requires that upon being notified that a licensed child care provider has been placed on probation, an entity must notify each parent in writing that the provider has been placed on probation and that the parent has the option of selecting a different provider or remaining with the same provider without risk of termination of payment. Proposed section 47-301.92 implements this part of §8212(e)(4)’s statutory mandate.

“However, there is a provision in §8212(e)(4) that has not been included in the proposed regulatory language. The 2004 analysis prepared for AB 72 by the Senate Education Committee noted that many of the families who will be receiving these notices are non-English speaking and may not be able to read this important correspondence. Thus, the Committee staff recommended the addition of language providing that to the extent feasible, a program is urged to provide this written notice in the primary language of the parent. This language was in fact amended into AB 72 on June 9, 2004, and is not contained in §8212(e)(4). Because the Legislature saw fit to include this provision in AB 72, we believe it would be appropriate to also include it in the regulatory language implementing AB 72.” (CAI)

Response:

The Department appreciates this comment but is not amending the regulations. Every state and local agency that serves a substantial number of non-English speaking people, and provides materials in English, must also provide the materials in the non-English language pursuant to the Dymally-Alatorre Bilingual Services Act, Government Code Sections 7290-7299.8. The proposed regulations are subject to the Dymally-Alatorre Bilingual Services Act; therefore, it is not necessary to amend the proposed regulations.

In addition, counties must comply with Section 21-115, “Provision for Services to Applicants and Recipients Who Are Non-English Speaking or Who Have Disabilities,” of the Manual of Policies and Procedures, which requires counties to promptly provide bilingual/interpretive services to all non-English speaking clients.

General Comments

Timely Notice of Action

4. Comment:

“We strongly recommend that the regulations address in writing an exception to the *Turner* timely Notice of Action (NOA) requirement that mandates a period of at least ten days for the issuance of an adverse NOA which would be required with the proposed change in regulations to inform parents/participants about the termination of their child care provider’s payment within two business days.” (LADPSS)

Response:

The Department appreciates this comment but is not amending the regulations. While the proposed regulations require that counties inform parents in writing that payment to their child care provider has been terminated and the reason for the termination, or that their child care provider has been placed on probation, the proposed regulations do not specify that counties issue NOAs. Although payment to the provider is terminated, the family remains eligible for child care services and will continue to receive their child care subsidy or a different provider. Counties have the option of using a NOA as a means to inform parents in writing about termination of their child care provider’s payments or that their child care provider has been placed on probation, or counties may issue a notification letter. If the county chooses to use a NOA, the NOA must be issued within two business days, as the Education Code Section 8212(e) requires that the parents be notified within that timeframe. This case-specific requirement is covered by the rule of statutory construction and supersedes the general ten-day noticing requirement. Therefore, the timely NOA requirement does not apply.

g) 15-Day Renotice Statement

A 15-day renotice was not required because there were no changes following the public hearing.